THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO.21484 of 2002

Dated 28-10-2005

Between:

Pulipati Dasaratharamaiah. ….Petitioner

and

The Government of A.P., Revenue (Endowments) rep. by its Secretary, Secretariat, Hyderabad, and four others.

….Respondents

THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO.21484 of 2002

ORDER:

This writ petition is filed questioning the G.O.Ms.No.405, Revenue (Endowments-II) Department dated 04-07-2002, whereunder the alienation of immovable properties belonging to various Hindu Religious institutions such as temples and maths has been permitted.

The petitioner claims to be a lessee in respect of the land to an extent of Ac.8-12 cents situated in Survey No.175 at Vavintaparthy village, Podalakuru Mandal, Nellore District, belonging to the fifth respondent-temple. It is stated that he has been in possession and enjoyment of the said land for the past fifty years. It is claimed that he was declared as the highest bidder in the auction held in the year 1997 and he has been continuing as the lessee. While so, the fifth respondent-temple issued a notification of sale dated 10-12-2002 proposing to sell the lands belonging to the fifth respondent-temple by way of open auction-cum-tender, including the land-in-question. The said action of the fifth respondent-temple is under challenge in this writ petition contending that the respondents ought to have offered the land-in-question at the first instance to the existing lessees to purchase the same. It is further contended that G.O.Ms.No.405 dated 04-07-2002 under which the impugned notification of sale was issued itself is arbitrary and illegal since the said G.O. does not provide for any notice to the existing tenant and there was no provision to offer the lands at the first instance for purchase to the existing tenant. Thus according to the petitioner the impugned sale notification is illegal.

This Court while ordering Rule Nisi on 28-10-2002 granted interim stay of finalization of the impugned auction.

On behalf of the fifth respondent-temple, a detailed counter-

affidavit has been filed stating that the petitioner is not a tenant in respect of the land-in-question. It is also stated that the petitioner has not been in possession of the said land at any point of time and all the averments in the writ petition are absolutely false and without any basis. It is further contended that G.O.Ms.No.405, dated 04-07-2002 is not at all applicable to the land-in-question since the same is situated in rural areas. It is further explained that the fifth respondent-temple has submitted sale proposals to the Commissioner, Endowments Department, through the Assistant Commissioner by letter dated 29-08-1998 seeking permission to sell away the entire lands belonging to the fifth respondent-temple including the land-in-question. The Commissioner of Endowments, having called for the objections and suggestions from the public by publication in the Andhra Pradesh Gazette as well as the local dailies, granted permission under Section 80 (1) (a) of the Act 30 of 1987 permitting the fifth respondent-temple to sell the entire lands belonging to it, vide proceedings dated 23-04-2001. Subsequently, paper publication in this regard was given in local daily on 13-10-2002. Thus it is pleaded that the auction impugned in the writ petition is in accordance with law and the writ petition is misconceived and is liable to be dismissed.

A separate counter-affidavit has been filed by the sixth respondent, who got himself impleaded, wherein it is stated that having participated in the auction conducted on 30-10-2002, he was declared as the successful bidder and accordingly he had purchased the land-in-question at the rate of Rs.30,500/- per acre and as per the terms and conditions, he had also deposited 1/3rd of the total amount on 30-10-2002 itself.

Though the petitioner filed a reply-affidavit reiterating that he is the lessee in respect of the land-in-question and carrying on agricultural operations, in the absence of any acceptable material to substantiate the same, I am not inclined to record any finding on the said issue which is a pure question of fact.

At any rate, the prayer in the main writ petition is to declare

G.O.Ms.No.405 dated 04-07-2002 as arbitrary and illegal. According to the petitioner, the impugned auction was conducted in pursuance of the G.O.Ms.No.405 dated 04-07-2002 and therefore, the same is also liable to be set aside.

A perusal of the G.O.Ms.No.405 dated 04-07-2002 shows that under the said order, the Government has issued certain guidelines for regularization of encroachments in respect of urban properties.

At the outset, it is to be noted that the specific case of the fifth respondent-temple is that the land-in-question is situated in rural area, but not in urban areas and therefore, G.O.Ms.No.405 dated 04-07-2002 does not attract to the case on hand. The said plea of the fifth respondent has not been disputed by the writ petitioner and nothing has been placed before this Court to show that the land-in-question is situated in urban area.

Therefore, as rightly contended by the learned counsel for the fifth respondent, G.O.Ms.No.405 dated 04-07-2002 does not apply to the case on hand. Under Section 80 of the Endowments Act, the Commissioner is the competent authority to grant sanction in respect of the sale of any immoveable properties belonging to the religious institutions or endowments. In the instant case, the sale proposed by the fifth respondent was sanctioned by the Commissioner of Endowments vide proceedings dated 23-04-2001.

In the circumstances, there is absolutely no justifiable ground to hold that the impugned sale is contrary to law. Moreover, absolutely no case is made out to show that the petitioner is the lessee in respect of the land-in-question at any point of time.

For the aforesaid reasons, the writ petition is misconceived and the relief as prayed for cannot be granted.

The writ petition is accordingly dismissed. No costs.

(G. ROHINI, J)

Date:28-10-2005

ghn